

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

SOVERAIN SOFTWARE LLC,

Plaintiff,

v.

CDW CORPORATION,

NEWEGG INC.,

REDCATS USA, INC.

SYSTEMAX INC.,

ZAPPOS.COM, INC.,

REDCATS USA, L.P.,

THE SPORTSMAN'S GUIDE, INC., AND

TIGERDIRECT, INC.,

Defendants.

Civil Action No. 6:07-CV-00511-LED

**RESPONSE TO DEFENDANTS' "UNOPPOSED" MOTION TO AMEND  
DISCOVERY ORDER TO EXTEND DEADLINES**

Plaintiff Soverain Software LLC hereby responds to Defendants' Systemax, Inc. and TigerDirect, Inc.'s "Unopposed" Motion to Amend Discovery Order to Extend Deadlines, and states as follows:

1. Defendants Systemax, Inc. and TigerDirect, Inc. have requested the Court to amend the Docket Control Order<sup>1</sup> to extend the June 20, 2008 deadlines through July 21, 2008. The Docket Control Order sets June 20, 2008 as the date by which to Defendants must comply with Local Patent Rules 3-3 and 3-4, join any additional parties, assert any counterclaims, and add any inequitable conduct allegations to pleadings.

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<sup>1</sup> Defendants mistakenly refer to the Discovery Order; however, the deadlines at issue are found in the Court's Docket Control Order, D.E. # 87.

2. In their motion, these Defendants represent that they “have addressed this issue with Soverain, and Soverain has stated it is unopposed to the relief requested.” See Motion, ¶ 3. This is true, but not the whole truth.

3. Both Defendants Systemax, Inc. and TigerDirect, Inc., as well as Defendants CDW, Inc., Newegg, Inc. and Zappos.com, Inc., separately asked Plaintiff to agree to extend the June 20, 2008 deadline until July 21, 2008.<sup>2</sup>

4. Plaintiff responded to all of the Defendants’ counsel with a proposal for collectively addressing these as well as other issues in this case.

5. Specifically, Soverain requested that any motion also include an agreement that Defendants would commence a rolling document production on June 20, 2008, and also address the upcoming July 24, 2008 deadline for exchange of proposed terms and claim elements for construction and set a date for submitting a joint proposed Protective Order to the Court.<sup>3</sup>

6. Defendants did not respond to Plaintiff’s proposal, but instead filed the instant “unopposed” motion addressing only the time extension. Accordingly, Plaintiff now requests that the Court address the other issues at the same time.

7. First, Plaintiff requests that Defendants not delay any production of documents until July 21, 2008, but instead commence a rolling production of documents under Local Patent Rule 3-4(a) (including documents such as “source code, specifications, schematics, flow charts, artwork, formulas, or other documentation sufficient to show the operation of any aspects or

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<sup>2</sup> Defendants Systemax, Inc. and TigerDirect, Inc. never addressed all of these deadlines with Plaintiff but instead asked for additional time only for their invalidity contentions and supporting documentation pursuant to Local Patent Rules 3-4(a) and (b). Defendants CDW, Inc., Newegg, Inc. and Zappos.com, Inc., however, subsequently requested an extension of all of the June 20, 2008 deadlines. Consistent with its effort to comprehensively resolve the pending issues between the parties, Plaintiff includes all of the deadlines and all of the Defendants in the attached Proposed Order.

<sup>3</sup> Plaintiff’s proposal also included Defendant Zappos.com, Inc.’s contention that it is improperly named in this lawsuit.

elements of” the instrumentalities accused of infringement) on June 20, 2008, and complete that production by June 21, 2008.

8. Defendants Systemax, Inc. and TigerDirect, Inc. have yet to produce any documents in this case. Plaintiff submits that a rolling production of the Defendants’ technical documents is a reasonable request given the time that Defendants have now had to collect and produce their own documents, now extended by an additional thirty (30) days. (Defendants’ stated basis for their motion, the need to review Plaintiff’s interrogatory responses, does not extend to the production of Defendants’ own technical documents.)

9. Plaintiff next requests that the Court’s amendment to the Docket Control Order extend the current July 24, 2008 deadline to comply with Local Patent Rule 4-1 (exchange of proposed terms and claim elements for construction) through and including August 22, 2008. This will afford Plaintiff the intended thirty (30) days to meaningfully review Defendants’ submissions prior to this deadline.

10. Finally, Plaintiff asks that the Court set a date for submission of a joint proposed Protective Order. This action was filed in November 2007, and Plaintiff sent Defendants’ counsel a draft Protective Order in January 2008. Since then the parties have had several conferences to discuss the protective order but have been unable to reach agreement.

11. Plaintiff believes that establishing a date by which the parties must submit either (a) a joint proposed Protective Order to the Court or (b) an order indicating the differences in the parties’ respective positions on Protective Order issues, will assist in resolving this issue.

12. The lack of a Protective Order in this action is making it difficult for Plaintiff to prepare its case, as many of the documents have been produced on an outside attorneys’ eyes

only basis under Local Patent Rule 2-2. Plaintiff had addressed this issue with the Defendants, but Defendants have so far refused to agree to the setting of a date.

13. Plaintiff therefore requests that the Court also amend the Discovery Order to set June 30, 2008 as the date for submission of a joint Protective Order.

14. For the Court's convenience, a Proposed Order granting Plaintiff's Motion and addressing all of these issues is filed herewith.

Respectfully submitted this 20<sup>th</sup> day of June, 2008.

/s/ Thomas L. Giannetti (with permission)

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ATTORNEYS FOR PLAINTIFF

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a copy of the Response to Defendants' "Unopposed" Motion to Amend Discovery Order to Extend Deadlines filed in the above-captioned matter was served on June 20, 2008, via the Court's ECM/ECF service, to all counsel of record who have consented to such electronic service under Local Rule CV-5(a)(3).

/s/ Stela C. Tipi